
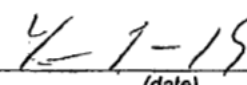


(11-10)		UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD <b>CHARGE AGAINST EMPLOYER</b>		DO NOT WRITE IN THIS SPACE	
		Case 5-CA-241380		Date Filed 5/13/19	
<b>INSTRUCTIONS:</b> File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.					
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT					
a. Name of Employer H&M International Transportation, Inc.				b. Tel. No. (732) 510-4640	
				c. Cell No.	
d. Address (street, city, state, ZIP code) 485-B US1 South, Suite 110 Iselin, NJ 08830		e. Employer Representative Charles T. Conner, President		f. Fax No.	
				g. e-Mail cconnors@hmit.net	
				h. Number of workers employed 18	
i. Type of Establishment (factory, mine, wholesaler, etc.) Ship Yard		j. Identify principal product or service Shipping Container Repair			
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.					
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)					
<p>Since on or about January 23, 2019, the above-named Employer has failed and refused to hire a majority of the predecessor employees.</p> <p>Since on or about January 31, 2019, the above-named Employer has failed and refused to bargain with the Union and/or has refused to meet with the Union, the collective bargaining representative of employees in an appropriate unit of the predecessor.</p>					
3. Full name of party filing charge (if labor organization, give full name, including local name and number) International Longshoremen's Association, Local 1970					
4a. Address (street and number, city, state, and ZIP code) 3300 East Princess Anne Road Norfolk, VA 23502				4b. Tel No. (757) 852-9304	
				4c. Cell No. (301) 348-3657	
				4d. Fax No. (757) 852-9305	
				4e. e-Mail kevbassnight@yahoo.com	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Longshoremen's Association, Local 1970					
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.				Tel No. (757) 852-9304	
By		Kevin Basnight, Local President		Office, if any, Cell No. (301) 348-3657	
	(signature of representative or person making charge) Kevin Basnight	(Print/type name and title or office, if any)		Fax No. (757) 852-9305	
	3300 East Princess Anne Road Norfolk, VA 23502			e-Mail kevbassnight@yahoo.com	
	(Address)	(date)			

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. §151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 5  
BANK OF AMERICA CENTER, TOWER II  
100 S. CHARLES STREET, STE 600  
BALTIMORE, MD 21201

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (410)962-2822  
Fax: (410)962-2198



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May 14, 2019

Mr. Charles T. Conner, President  
H&M Transportation, Inc.  
485-B US1 South, Suite 110  
Iselin, NJ 08830

Re: H&M International Transportation, Inc.  
Case 05-CA-241380

Dear Mr. Conner:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Resident Agent Stephanie C. Eitzen whose telephone number is (757)921-9005. If this Board agent is not available, you may contact Supervisory Field Attorney Patrick J. Cullen whose telephone number is (410)962-2916.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlrb.gov](http://www.nlrb.gov), or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly. **Due to the nature of the allegations in the enclosed unfair labor practice charge, we have identified this case as one in which injunctive relief pursuant to Section 10(j) of the Act may be appropriate.** Therefore, in addition to investigating the merits of the unfair labor practice

allegations, the Board agent will also inquire into those factors relevant to making a determination as to whether or not 10(j) injunctive relief is appropriate in this case. Accordingly, please include your position on the appropriateness of Section 10(j) relief when you submit your evidence relevant to the investigation.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

**Prohibition on Recording Affidavit Interviews:** It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

**Procedures:** We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, [www.nlr.gov](http://www.nlr.gov). However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native

May 14, 2019

format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, [www.nlrb.gov](http://www.nlrb.gov) or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Nancy Wilson", is positioned above the typed name and title.

Nancy Wilson  
Acting Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

**QUESTIONNAIRE ON COMMERCE INFORMATION**

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

05-CA-241380

**1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)****2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION  
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

**4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS****5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

**9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates )**

YES NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.  
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.  
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.  
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount)  
☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. Did you **begin operations within the last 12 months?** If yes, specify date: \_\_\_\_\_**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

**12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE**

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**H&M INTERNATIONAL TRANSPORTATION,  
INC.**

Charged Party

and

**INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION LOCAL 1970**

Charging Party

**Case 05-CA-241380**

**AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, state under oath that on May 14, 2019, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Mr. Charles T. Conner, President  
H&M Transportation, Inc.  
485-B US1 South, Suite 110  
Iselin, NJ 08830

May 14, 2019

Date

Doni Graham, Designated Agent of NLRB

Name

/s/ Doni Graham

Signature





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 5  
BANK OF AMERICA CENTER, TOWER II  
100 S. CHARLES STREET, STE 600  
BALTIMORE, MD 21201

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (410)962-2822  
Fax: (410)962-2198



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May 14, 2019

Mr. Kevin Basnight  
President, ILA Local 1970  
International Longshoremen's  
Association Local 1970  
3300 East Princess Anne Road  
Norfolk, VA 23502

Re: H&M International Transportation, Inc.  
Case 05-CA-241380

Dear Mr. Basnight:

The charge that you filed in this case on May 13, 2019 has been docketed as case number 05-CA-241380. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Resident Agent Stephanie C. Eitzen whose telephone number is (757)921-9005. If this Board agent is not available, you may contact Supervisory Field Attorney Patrick J. Cullen whose telephone number is (410)962-2916.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you

May 14, 2019

fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



Nancy Wilson  
Acting Regional Director

Enclosure: Copy of Charge



Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARDFirst Amended Charge **CHARGE AGAINST EMPLOYER****DO NOT WRITE IN THIS SPACE**

Case

Date Filed

05-CA-241380

7/9/2019

**INSTRUCTIONS:**

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

**1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT**

a. Name of Employer  H&M International Transportation, Inc.		b. Tel. No. (732) 510-4640
d. Address (street, city, state ZIP code)  485-C US1 South, Suite 330 Iselin, NJ 08830		c. Cell No.
e. Employer Representative  Charles T. Connor, President		f. Fax No.
		g. e-Mail cconnors@hmit.net
		h. Dispute Location (City and State) 1710 Atlantic Ave. Chesapeake, VA 23323
i. Type of Establishment (factory, nursing home, hotel) Intermodal Contractor for Norfolk Southern Railroad	j. Principal Product or Service loading, unloading and repairing shipping containers	k. Number of workers at dispute location  approximately 18

1. The above-named employer has engaged in and is engaging unfair labor practices within the meaning of section 8(a), subsections (1), (3) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

SEE ADDITIONAL PAGE

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

International Longshoremen's Association, Local 1970

4a. Address (street and number, city, state, and ZIP code)

3300 East Princess Anne Road  
Norfolk, VA 23502

4b. Tel. No.

757-852-9304

4c. Cell No.

301-348-3657

4d. Fax No.

757-852-9305

4e. e-Mail

kevinbasnight@yahoo.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

International Longshoremen's Association

**6. DECLARATION**

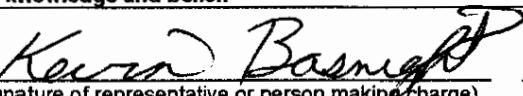
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Tel. No.

757-852-9304

Office, if any, Cell No.

301-348-3657

By:   
(signature of representative or person making charge)

Kevin Basnight,  
Local President

Print Name and Title

Fax No.

757-852-9305

e-Mail

kevinbasnight@yahoo.com

Address:  
3300 East Princess Anne Road  
Norfolk, VA 23502

Date: 7-9-19

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**  
**PRIVACY ACT STATEMENT**

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## ATTACHMENT

### 2. Basis of the charge:

Since on or about January 23, 2019, the above-named Employer has failed and refused to hire a majority of the predecessor's employees in order to avoid a bargaining obligation with the International Longshoremen's Association, Local 1970 (Union), the collective-bargaining representative of the employees in an appropriate unit of the predecessor employer, ITS ConGlobal. By this conduct, the Employer has been discriminating with regard to hire or tenure of employment or any other term or condition of employment to discourage membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

Since on or about January 23, 2019, and continuing, the above-named Employer has unilaterally changed the terms and conditions of employment of employees in the bargaining unit without providing the Union with advance notice and opportunity to bargain, and thereby has been refusing to bargain collectively with the representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

Since on or about January 31, 2019, the above-named Employer has failed and refused to recognize, bargain collectively, and/or meet with the Union, thereby refusing to bargain collectively with the representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

On multiple occasions since late January 2019, the above-named Employer, by its supervisors and agents, including former Terminal Manager Tony Lee, has interfered with, restrained and coerced its employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act by telling employees they were not going to be hired by the Employer because they voted to be represented by the Union.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 5  
BANK OF AMERICA CENTER, TOWER II  
100 S. CHARLES STREET, STE 600  
BALTIMORE, MD 21201

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (410)962-2822  
Fax: (410)962-2198



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Mobile App

July 10, 2019

Stefan J. Marculewicz, Esq.  
Tony W. Torain II, Esq.  
Littler, Mendelson, P.C.  
815 Connecticut Avenue, N.W. Suite 400  
Washington, DC 20006-4046

Re: H&M International Transportation, Inc.  
Case 05-CA-241380

Dear Mr. Conner:

Enclosed is a copy of the first amended charge that has been filed in this case.

**Investigator:** This charge is being investigated by Resident Agent Stephanie C. Eitzen whose telephone number is (757)921-9005. If the agent is not available, you may contact Supervisory Field Attorney Patrick J. Cullen whose telephone number is (410)962-2916.

**Presentation of Your Evidence:** As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the first amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

**Prohibition on Recording Affidavit Interviews:** It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

**Procedures:** Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent. The Agency requests all evidence submitted electronically to be in the form it is

July 10, 2019

normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Nancy Wilson", is positioned above the typed name.

Nancy Wilson  
Acting Regional Director

Enclosure: Copy of first amended charge

cc: Mr. Charles T. Conner, President  
H&M Transportation, Inc.  
485-B US1 South, Suite 330  
Iselin, NJ 08830

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**H&M TRANSPORTATION, INC.**

Charged Party

and

**INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION LOCAL 1970**

Charging Party

**Case 05-CA-241380**

**AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on July 10, 2019, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Mr. Charles T. Conner, President  
H&M Transportation, Inc.  
485-B US1 South, Suite 110  
Iselin, NJ 08830

Stefan J. Marculewicz, Esq.  
Tony W. Torain II, Esq.  
Littler Mendelson, P.C.  
815 Connecticut Avenue, N.W., Suite 400  
Washington, DC 20006-4046

July 10, 2019

Date

Doni Graham, Designated Agent of NLRB

Name

/s/ Doni Graham

Signature



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 5  
BANK OF AMERICA CENTER, TOWER II  
100 S. CHARLES STREET, STE 600  
BALTIMORE, MD 21201

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (410)962-2822  
Fax: (410)962-2198



Download  
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Mobile App

July 10, 2019

Mr. Kevin Basnight  
President, ILA Local 1970  
International Longshoremen's  
Association Local 1970  
3300 East Princess Anne Road  
Norfolk, VA 23502

Re: H&M International Transportation, Inc.  
Case 05-CA-241380

Dear Mr. Basnight:

We have docketed the first amended charge that you filed in this case.

**Investigator:** This charge is being investigated by Resident Agent Stephanie C. Eitzen whose telephone number is (757)921-9005. If the agent is not available, you may contact Supervisory Field Attorney Patrick J. Cullen whose telephone number is (410)962-2916.

**Presentation of Your Evidence:** As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the first amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

**Prohibition on Recording Affidavit Interviews:** It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

**Procedures:** Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter



July 10, 2019

sent to you with the original charge in this matter. If you have any questions, please contact the Board agent. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nancy Wilson". The signature is fluid and cursive, with the first name "Nancy" and last name "Wilson" clearly distinguishable.

Nancy Wilson  
Acting Regional Director

Enclosure: Copy of first amended charge

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**SECOND AMENDED CHARGE AGAINST EMPLOYER**

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
05-CA-241380	11/12/19

**INSTRUCTIONS:**

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

## 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer  H&M International Transportation, Inc.		b. Tel. No. (732) 510-4640
		c. Cell No.
d. Address (street, city, state ZIP code)  485-C US-1 South Suite 330 Iselin, NJ 08830	e. Employer Representative  Charles T. Connor, President	f. Fax No.
		g. e-Mail cconnors@hmit.net
		h. Dispute Location (City and State) 1710 Atlantic Ave. Chesapeake, VA 23323
i. Type of Establishment (factory, nursing home, hotel) Intermodal Contractor for Norfolk Southern Railroad	j. Principal Product or Service loading, unloading and repairing shipping containers	k. Number of workers at dispute location  approximately 18
l. The above-named employer has engaged in and is engaging unfair labor practices within the meaning of section 8(a), subsections (1), (2), (3) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
<ul style="list-style-type: none"> <li>2. Basis of the Charge (<i>set forth a clear and concise statement of the facts constituting the alleged unfair labor practices</i>)</li> </ul>		
SEE ADDITIONAL PAGE		

3. Full name of party filing charge (*if labor organization, give full name, including local name and number*)

International Longshoremens' Association, Local 1970

4a. Address (street and number, city, state, and ZIP code)  3300 East Princess Anne Road Norfolk, VA 23502		4b. Tel. No.
		4c. Cell No. 757-537-7342
		4d. Fax No.
		4e. e-Mail stephenwalton77@yahoo.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit ( <i>to be filled in when charge is filed by a labor organization</i> )  International Longshoremens' Association		
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No.
By: Stephen Walton	Stephen Walton, Local President	Office, if any, Cell No. 757-537-7342
(signature of representative or person making charge)	Print Name and Title	Fax No.
Address: 3300 East Princess Anne Road Norfolk, VA 23502	Date: 11/8/19	e-Mail stephenwalton77@yahoo.com

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**  
**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

## **ATTACHMENT**

### **2. Basis of the charge:**

Since on or about January 23, 2019, the above-named Employer has failed and refused to hire a majority of the predecessor's employees in order to avoid a bargaining obligation with the International Longshoremen's Association, Local 1970 (ILA 1970), the collective-bargaining representative of the employees in an appropriate unit of the predecessor employer, ITS ConGlobal. By this conduct, the Employer has been discriminating with regard to hire or tenure of employment or any other term or condition of employment to discourage membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

Since on or about January 23, 2019, the above-named Employer dominated or interfered with the formation or administration of a labor organization, in violation of Section 8(a)(2) of the Act, by recognizing the International Brotherhood of Teamsters, Local 822 as the collective-bargaining representative of the unit of its employees when it had a bargaining obligation with the International Longshoremen's Association, Local 1970 and by entering into a collective-bargaining agreement with the International Brotherhood of Teamsters, Local 822 on January 28, 2019.

Since on or about January 23, 2019, and continuing, the above-named Employer has unilaterally changed the terms and conditions of employment of employees in the bargaining unit without providing ILA 1970 with advance notice and opportunity to bargain, and thereby has been refusing to bargain collectively with the representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

Since on or about January 31, 2019, the above-named Employer has failed and refused to recognize, bargain collectively, and/or meet with ILA 1970, thereby refusing to bargain collectively with the representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

On multiple occasions since late January 2019, the above-named Employer, by its supervisors and agents, including former Terminal Manager Tony Lee, has interfered with, restrained and coerced its employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act by telling employees they were not going to be hired by the Employer because they voted to be represented by ILA 1970.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 5  
BANK OF AMERICA CENTER, TOWER II  
100 S. CHARLES STREET, STE 600  
BALTIMORE, MD 21201

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (410)962-2822  
Fax: (410)962-2198



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Mobile App

November 14, 2019

Stefan J. Marculewicz, Esq.  
Tony W. Torain, II, Esq.  
Littler, Mendelson, P.C.  
815 Connecticut Avenue, N.W., Suite 400  
Washington, DC 20006-4046

Re: H&M International Transportation, Inc.  
Case 05-CA-241380

Dear Mr. Marculewicz and Mr. Torain:

Enclosed is a copy of the second amended charge that has been filed in this case.

**Investigator:** This charge is being investigated by Resident Agent Stephanie C. Eitzen whose telephone number is (757) 921-9005. If Stephanie C. Eitzen is not available, you may contact Supervisory Field Attorney Patrick J. Cullen whose telephone number is (410) 962-2916.

**Presentation of Your Evidence:** As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the second amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

**Prohibition on Recording Affidavit Interviews:** It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

**Procedures:** Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)). You must e-file all documents electronically or provide a

November 14, 2019

written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Nancy Wilson", is positioned above the typed name and title.

Nancy Wilson  
Acting Regional Director

Enclosure: Copy of second amended charge

cc: Mr. Charles T. Conners, President  
H&M International Transportation, Inc.  
485-C, US-1 South, Suite 330  
Iselin, NJ 08830

Mr. James Wright, President  
Teamsters Local Union No. 822  
Affiliated with International  
Brotherhood of Teamsters  
5718 Bartee Street  
Norfolk, VA 23502-4502

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**H&M INTERNATIONAL TRANSPORTATION,  
INC.**

Charged Party

and

**INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION LOCAL 1970**

Charging Party

**Case 05-CA-241380**

**AFFIDAVIT OF SERVICE OF SECOND AMENDED CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on November 14, 2019, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Mr. Charles T. Conners, President  
H&M Transportation, Inc.  
485-C, US-1 South, Suite 330  
Iselin, NJ 08830

Stefan J. Marculewicz, Esq.  
Tony W. Torain, II, Esq.  
Littler, Mendelson, P.C.  
815 Connecticut Avenue, N.W., Suite 400  
Washington, DC 20006-4046

November 14, 2019

Date

Andrew Giannasi, Designated Agent of NLRB

Name

/s/ *Andrew Giannasi*

Signature





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 5  
BANK OF AMERICA CENTER, TOWER II  
100 S. CHARLES STREET, STE 600  
BALTIMORE, MD 21201

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (410)962-2822  
Fax: (410)962-2198



Download  
NLRB  
Mobile App

November 14, 2019

Mr. Stephen Walton, President  
International Longshoremen's  
Association Local, 1970  
3300 E. Princess Anne Road  
Norfolk, VA 23502-1564

Re: H&M International Transportation, Inc.  
Case 05-CA-241380

Dear Mr. Walton:

We have docketed the second amended charge that you filed in this case.

**Investigator:** This charge is being investigated by Resident Agent Stephanie C. Eitzen whose telephone number is (757) 921-9005. If Stephanie C. Eitzen is not available, you may contact Supervisory Field Attorney Patrick J. Cullen whose telephone number is (410) 962-2916.

**Presentation of Your Evidence:** As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the second amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

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November 14, 2019

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If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nancy Wilson", written in a cursive style.

Nancy Wilson  
Acting Regional Director

Enclosure: Copy of second amended charge

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

H&M INTERNATIONAL TRANSPORTATION, INC.

and

Case 5-CA-241380

INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, LOCAL 1970, AFL-CIO

and

TEAMSTERS LOCAL UNION No. 822,  
affiliated with the INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, PARTY IN INTEREST

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by International Longshoremen's Association, Local 1970, whose correct name is International Longshoremen's Association, Local 1970, AFL-CIO (Charging Party). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that H&M International Transportation, Inc. (Respondent) has violated the Act as described below.

1. (a) The charge in in this proceeding was filed by the Charging Party on May 13, 2019, and a copy was served upon Respondent by U.S. mail on May 14, 2019.

(b) The first amended charge in this proceeding was filed by the Charging Party on July 9, 2019, and a copy was served upon Respondent by U.S. mail on July 10, 2019.

(c) The second amended charge in this proceeding was filed by the Charging Party on November 12, 2019, and a copy was served upon Respondent by U.S. mail on November 14, 2019.

2. (a) At all material times, Respondent has been a corporation with an office and place of business in Iselin, New Jersey, and has been engaged in providing railroad terminal services at facilities throughout the United States, including at the Norfolk-Portlock Intermodal Yard (Norfolk Yard) located at 1701 Atlantic Avenue in Chesapeake, Virginia.

(b) During the 12-month period ending May 30, 2020, Respondent, in conducting its operations described above in paragraph 2(a), performed services valued in excess of \$50,000 in states other than the State of Virginia.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. (a) About January 23, 2019, Respondent assumed performing railroad terminal services for Norfolk Southern Railway Company at the Norfolk Yard previously performed by ITS Technologies & Logistics, LLC (ITS) at the Norfolk Yard and, since then, Respondent has continued to operate the business previously performed by ITS at the Norfolk Yard in basically unchanged form.

(b) But for the conduct described below in paragraph 14, Respondent would have employed, as a majority of its employees, individuals who were previously employees of ITS.

(c) Based on the conduct described below in paragraph 14 and the operations described above in paragraph 3, Respondent has continued the employing entity of, and is a successor to, ITS.

4. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, Teamsters Local Union No. 822, affiliated with the International Brotherhood of Teamsters (Teamsters Local 822) has been a labor organization within the meaning of Section 2(5) of the Act.

6. (a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

- |                     |   |  |
|---------------------|---|--|
| (1) Leander Barrow  | - | Operations Manager at Norfolk Yard until about May 5, 2019<br>Terminal Manager at Norfolk Yard since about May 6, 2019 |
| (2) Charles Connors | - | President and Chief Operating Officer  |
| (3) Jesse DeGroot   | - | General Manager, Intermodal Operations   |
| (4) Anthony Lee     | - | Terminal Manager at Norfolk Yard until about April 30, 2019  |
| (5) Alan Young      | - | Operations Manager at Norfolk Yard since about May 5, 2019   |

(b) At all material times, Juanita Williams held the position of Respondent's Administrative Assistant at the Norfolk Yard, and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

7. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time terminal operators, gate clerks, container and chassis mechanics, and lift equipment mechanics; but excluding all office clerical employees, professional employees, watchmen, guards, and supervisors as defined in the Act.

8. On December 10, 2018, the Charging Party was certified as the exclusive collective-bargaining representative of the Unit employed by ITS.

9. Since about January 23, 2019, based on the facts described above in paragraph 3, the Charging Party has been the designated exclusive collective-bargaining representative of the Unit.

10. (a) From about December 10, 2018 to January 23, 2019, based on Section 9(a) of the Act, the Charging Party had been the exclusive collective-bargaining representative of the Unit employed by ITS.

(b) At all times since about January 23, 2019, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of Respondent's employees in the Unit.

11. About late January or early February of 2019, Respondent, by Anthony Lee, by telephone, at the Norfolk Yard, told former employees of ITS in the Unit, who had called to inquire about the status of their employment application to work for Respondent, that they worked for the union because they had voted to be represented by the union at ITS and he did not understand why they were calling him now.

12. About January 23, 2019, Respondent granted recognition to and, about January 28, 2019, entered into, and since then has maintained and enforced, a collective-bargaining agreement with Teamsters Local 822 as the exclusive collective-bargaining representative of the following employees of Respondent (the Teamsters Unit): all full-time and part-time switcher drivers, crane operators, lift drivers, and clerks.

13. Respondent engaged in the conduct above in paragraph 12, even though Teamsters Local 822 did not represent a majority of the Teamsters Unit.



14. (a) Since January 2019, Respondent was hiring, or had concrete plans to hire, employees to work at the Norfolk Yard.

(b) Since about January 23, 2019, Respondent, in connection with the conduct described above in paragraphs 11 and 12, refused to hire, or consider for hire, the following employees of ITS in the Unit who applied for employment: Michelle Clark, Vernon Cuffey, Darryl Halsey, Rayeon Jordan Hicks, Mark Keating, Jamel Christopher Lucas, Michael McManus, Ernest Pierre Perry, and Earl Lee Smith.

(c) From about January 23, 2019, to November of 2019, Respondent, in connection with the conduct described above in paragraphs 11 and 12, refused to hire, or consider for hire, the following employees of ITS in the Unit who applied for employment: Carlos Jones and Ron Spencer.

15. Respondent engaged in the conduct described above in paragraph 14 because Respondent believed the named employees joined and assisted the Charging Party and engaged in concerted activities, and to discourage employees for engaging in these activities.

16. But for the conduct described above in paragraphs 14 and 15, Respondent would have employed at the Norfolk Yard, as a majority of its employees, individuals who were previously employed by ITS in the Unit at the Norfolk Yard.

17. Based on the conduct described above in paragraphs 14 through 16, and the operations described above in paragraph 3, Respondent has continued the employing entity of, and is a successor to, ITS at the Norfolk Yard.

18. (a) Since about January 23, 2019, based on the conduct described above in paragraphs 10, and paragraphs 14 through 17, the Charging Party has been the exclusive collective-bargaining representative of Respondent's employees in the Unit.

(b) At all times since about January 23, 2019, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of Respondent's employees in the Unit.

19. Since about January 23, 2019, Respondent has established rates of pay, benefits, hours of work, and other terms and conditions of employment for the employees in the Unit without prior notice to the Charging Party and/or without affording the Charging Party an opportunity to bargain with Respondent with respect to this conduct.

20. The subjects set forth in paragraph 19 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purpose of collective bargaining.

21. About January 31, 2019, the Charging Party, by letter, requested that Respondent recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Charging Party as the exclusive collective-bargaining representative of the Unit.

22. Since about January 31, 2019, Respondent has failed and refused to recognize and bargain with the Charging Party as the exclusive collective-bargaining representative of the Unit.

23. By the conduct described above in paragraph 11, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

24. By the conduct described above in paragraphs 12 and 13, Respondent has been rendering unlawful assistance and support to a labor organization in violation of Section 8(a)(1) and (2) of the Act

25. By the conduct described above in paragraphs 14 and 15, Respondent has been discriminating in regard to the hire or tenure, or terms and conditions of employment, of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

26. By the conduct described above in paragraphs 19, 20, and 22, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

27. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **REMEDY**

The General Counsel seeks, as part of the remedy for the allegations in paragraphs 14, 15, and 25, an Order that Respondent: (1) offer immediate and full reinstatement to each discriminatee denied hire; (2) make whole the discriminatees it refused to hire, as well as those it delayed in hiring, for any loss of earnings and other benefits; (3) be required to reimburse amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination; and (4) for each discriminatee receiving backpay as a result of those unfair labor practices, Respondent be required to submit to the Regional Director for Region 5 a completed IRS Form W-2 reflecting backpay paid to each of the discriminatees.

The General Counsel seeks, as part of the remedy for Respondent's unfair labor practices alleged above in paragraphs 12 through 22, and 24 through 26, an Order requiring Respondent: (1) to withdraw its recognition from Teamsters Local 822; (2) rescind the unilateral

changes made by Respondent and the collective-bargaining agreement Respondent entered into with Teamsters Local 822; and (3) recognize and bargain in good faith with the Charging Party, on request, for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before June 25, 2020**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted

to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on a date, and at a time and location to be determined, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Baltimore, Maryland this 11th day of June 2020.

(SEAL)

/s/ SEAN R. MARSHALL

---

Sean R. Marshall, Regional Director  
National Labor Relations Board, Region 5  
Bank of America Center - Tower II  
100 South Charles Street, Suite 600  
Baltimore, MD 21201

Attachments

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in

**evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Case 5-CA-241380

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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**RESPONDENT:**

Mr. Charles T. Connors  
President  
H&M International Transportation, Inc.

[connors@hmit.net](mailto:connors@hmit.net)



**COUNSEL FOR CHARGING PARTY:**

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**CHARGING PARTY:**

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International Longshoremen's Association,  
Local 1970

[stephenwalton77@yahoo.com](mailto:stephenwalton77@yahoo.com)

**INTERESTED PARTY:**

Mr. James Wright  
President  
Teamsters Local Union No. 822, Affiliated  
With International Brotherhood of  
Teamsters

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

**INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, LOCAL 1970,**

Charging Party,

v.

**H&M INTERNATIONAL TRANSPORTATION,  
INC.,**

Respondent.

Case No. 05-CA-241380

**ANSWER AND DEFENSES ON BEHALF OF RESPONDENT**

NOW COMES Respondent H&M International Transportation, Inc. ("Respondent"), by and through its attorneys, Littler Mendelson, P.C., and for its Answer and Defenses to the Complaint ("Complaint") of International Longshoremen's Association, Local 1970, a/k/a International Longshoremen's Association, Local 1970, AFL-CIO ("Charging Party") states as follows:

**RESPONSE TO COMPLAINT**

In response to the initial, unnumbered paragraph of the Complaint, Respondent admits that the Complaint is based upon a charge brought by Charging Party against Respondent and that it is purportedly brought pursuant to Section 10(b) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151, *et seq.*, and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Respondent has violated the Act. However, as detailed below, Respondent denies the allegations in the charge upon which the Complaint is

based, denies the allegations in the Complaint, denies that it violated the Act, and denies any remaining allegations in the initial, unnumbered paragraph of the Complaint.

**1.**

**(a)** Respondent admits receiving a copy of the unfair labor practice filed by Charging Party. Respondent denies the remaining allegations in Paragraph 1(a) of the Complaint.

**(b)** Respondent admits receiving a copy of the first amended unfair labor practice filed by Charging Party. Respondent denies the remaining allegations in Paragraph 1(b) of the Complaint.

**(c)** Respondent admits receiving a copy of the second amended unfair labor practice filed by Charging Party. Respondent denies the remaining allegations in Paragraph 1(b) of the Complaint.

**2.**

**(a)** Respondent admits the allegations in Paragraph 2(a) of the Complaint.

**(b)** Respondent admits the allegations in Paragraph 2(b) of the Complaint.

**(c)** Paragraph 2(c) states a legal conclusion for which no response is required. To the extent a response is required, Respondent admits the allegations in Paragraph 2(c).

**3.**

**(a)** Respondent admits that, on or about January 23, 2019, Respondent assumed performing railroad terminal services for Norfolk Southern Railway Company at the Norfolk Yard previously performed by ITS Technologies & Logistics, LLC (ITS) at the Norfolk Yard. Respondent denies the remaining allegations in Paragraph 3(a) of the Complaint.

**(b)** Respondent denies the allegations in Paragraph 3(b) of the Complaint.

**(c)** Respondent denies the allegations in Paragraph 3(c) of the Complaint.

**4.**

Paragraph 4 states a legal conclusion for which no response is required. To the extent a response is required, Respondent admits the allegations in Paragraph 2).

**5.**

Paragraph 5 states a legal conclusion for which no response is required. To the extent a response is required, Respondent admits the allegations in Paragraph 5.

**6.**

**(a)** Responding to Paragraph 6(a) of the Complaint, Respondent admits that, at all material times, Leander Barrow held the position of Operations Manager at Norfolk Yard until about May 5, 2019 and the position of Terminal Manager at Norfolk Yard since about May 6, 2019; Charles Connors held the position of President and Chief Operating Officer with Respondent; Jesse DeGroot held the position of Vice President, Intermodal Operations with Respondent; Anthony Lee held the position of Terminal Manager at Norfolk Yard, until approximately April 30, 2019, and Alan Young held the Operations Manager at Norfolk Yard since approximately May 5, 2019. The allegations in Paragraph 6(a) also state legal conclusions about Mr. Barrow, Mr. Connors, Mr. Degroot, Mr. Lee, and Mr. Young's supervisory and agency status under the Act for which no response is required. To the extent a response is required, Respondent admits these allegations in Paragraph 6(a). Respondent denies any remaining allegations in the Paragraph 6(a) of the Complaint.

**(b)** Responding to Paragraph 6(b) of the Complaint, Respondent admits that, at all material times, Juanita Williams has held the position of Respondent's Administrative Assistant at the Norfolk Yard. The allegations in Paragraph 6(b) also state legal conclusions about Ms. William's agency status under the Act for which no response is required. To the extent a

response is required, Respondent denies these allegations in Paragraph 6(b). Respondent denies any remaining allegations in the Paragraph 6(b) of the Complaint.

**7.**

Paragraph 7 states a legal conclusion for which no response is required. To the extent a response is required, Respondent denies the allegations in Paragraph 7.

**8.**

Upon information and belief, Respondent admits the allegations in Paragraph 8 of the Complaint.

**9.**

Respondent denies the allegations in Paragraph 9 of the Complaint.

**10.**

**(a)** Upon information and belief, Respondent admits the allegations in Paragraph 10(a) of the Complaint.

**(b)** Respondent denies the allegations in Paragraph 10(b) of the Complaint.

**11.**

Respondent denies the allegations in Paragraph 11 of the Complaint.

**12.**

Respondent admits the allegations in Paragraph 12 of the Complaint.

**13.**

Respondent denies the allegations in Paragraph 13 of the Complaint.

**14.**

**(a)** Respondent admits the allegations in Paragraph 14(a) of the Complaint.

**(b)** Respondent denies the allegations in Paragraph 14(b) of the Complaint.

**(c)** Respondent denies the allegations in Paragraph 14(c) of the Complaint.

**15.**

Respondent denies the allegations in Paragraph 15 of the Complaint.

**16.**

Respondent denies the allegations in Paragraph 16 of the Complaint.

**17.**

Respondent denies the allegations in Paragraph 17 of the Complaint.

**18.**

**(a)** Respondent denies the allegations in Paragraph 18(a) of the Complaint.

**(b)** Respondent denies the allegations in Paragraph 18(b) of the Complaint.

**19.**

Respondent denies that Charging Party was owed prior notice of or had the right to bargain over the setting of any terms and conditions of employment for any of Respondent's employees. Respondent admits any remaining allegations in Paragraph 19 of the Complaint.

**20.**

Paragraph 20 states a legal conclusion for which no response is required. To the extent a response is required, Respondent admits the allegations in Paragraph 20.

**21.**

Respondent admits that Charging Party requested that it be recognized as the exclusive collective-bargaining agent of the ITS Unit and to bargain collectively with Respondent. Respondent denies any remaining allegations in Paragraph 21 of the Complaint.

**22.**

Respondent denies the allegations in Paragraph 22 of the Complaint.

**23.**

Respondent denies the allegations in Paragraph 23 of the Complaint.

**24.**

Respondent denies the allegations in Paragraph 24 of the Complaint.

**25.**

Respondent denies the allegations in Paragraph 25 of the Complaint.

**26.**

Respondent denies the allegations in Paragraph 26 of the Complaint.

**27.**

Respondent denies the allegations in Paragraph 27 of the Complaint.

**28.**

Respondent denies that it violated any provision of the Act and denies the substantive allegations in the Complaint.

### **AFFIRMATIVE DEFENSES**

1. As a FIRST, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that the claims alleged in the Complaint are barred in whole or in part because the allegations upon which they are based are insufficient to state any violations of the National Labor Relations Act (the “Act”).

2. As a SECOND, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that even assuming, *arguendo*, any allegation in the Complaint is found to be a violation of the Act, the remedy requested is inappropriate as a matter of law and that the remedies requested therein, are improper to the extent that they exceed the scope of the allegations contained within the charging party’s unfair labor practice charges at issue in this matter.

3. As a THIRD, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges the National Labor Relations Board and the General Counsel have exceeded their authority in the investigation of the charging party’s unfair labor practice charges.

4. As a FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges it has not, at any time, interfered with, restrained, or coerced any employees in the exercise of their Section 7 rights under the Act.

5. As a FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that the National Labor Relations Board has no jurisdiction over those alleged unfair labor practices set forth in the Complaint which are barred by the six-month statute of limitations set forth in Section 10(b) of the Act.

6. As a SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that the Complaint fails to state a *prima facie* violation of the Act.

7. As a SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that the General Counsel has interpreted the National Labor Relations Act in a way that improperly conflicts with Congressional intent.

8. As a EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that, at no time, was Charging Party recognized, or entitled to be recognized, as the certified bargaining representative, or entitled to be recognized as the certified bargaining representative, for a bargaining unit of Respondent's employees at the Norfolk-Portlock Intermodal Yard.

9. As a NINTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that it lawfully recognized Teamsters Local Union No. 822 as the exclusive representative of a bargaining unit of employees at the Norfolk-Portlock Intermodal Yard.

10. As a TENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that it lawfully bargained with Teamsters Local Union No. 822 as the exclusive representative of a bargaining unit of employees at the Norfolk-Portlock Intermodal Yard.



11. As a ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that it lawfully entered into a collective bargaining agreement with Teamsters Local Union No. 822 as the exclusive representative of a bargaining unit of employees at the Norfolk-Portlock Intermodal Yard.

12. As a TWELTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that it lawfully implemented terms and conditions of employment for its employees.

13. As a THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that, at no time, did it unlawfully discriminate against any person as a result of her or her concerted activities or exercise of rights protected by the Act, including with respect to hiring or considering an applicant for employment with Respondent, tenure, or terms and conditions of employment.

14. As a FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that, at no time, was it a successor to ITS Technologies & Logistics, LLC at the Norfolk-Portlock Intermodal Yard.

15. As a FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent reserves the right to assert any additional affirmative defenses it discovers during the course of these proceedings.

WHEREFORE, Respondent prays that the Complaint be dismissed in its entirety and that Respondent recover its costs and attorneys' fees incurred herein and for such other and further relief as may be just and proper.

Respectfully submitted,

**LITTLER MENDELSON, P.C.**

/s/ Brendan J. Fitzgerald

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*Attorneys for Respondent*

Dated: June 25, 2020

### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 25<sup>th</sup> day of June, 2020, the foregoing *Answer and Defenses On Behalf of Respondent* has been electronically filed with the National Labor Relations Board through the E-file system at [www.nlrb.gov](http://www.nlrb.gov).

I further certify that, on this 25<sup>th</sup> day of June, 2020, a copy of the foregoing was forwarded via electronic mail to the following:

Brian G. Esders, Esq.  
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*Counsel for Charging Party*

Justin P. Keating, Esq.  
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*Counsel for Interested Party Teamsters Local Union 822*

/s/ Brendan J. Fitzgerald  
An Attorney for Respondent

4845-3166-2528.1 008561.1143

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

H&M INTERNATIONAL TRANSPORTATION, INC.

and

Case 5-CA-241380

INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, LOCAL 1970, AFL-CIO

and

TEAMSTERS LOCAL UNION No. 822,  
affiliated with the INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, PARTY IN INTEREST

**FIRST AMENDED COMPLAINT**

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board (the Board), the Complaint and Notice of Hearing issued on June 11, 2020 is amended as follows.

This First Amended Complaint is based on a charge filed by International Longshoremen's Association, Local 1970, whose correct name is International Longshoremen's Association, Local 1970, AFL-CIO (Charging Party). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 and 102.17 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that H&M International Transportation, Inc. (Respondent) has violated the Act as described below.

1. (a) The charge in in this proceeding was filed by the Charging Party on May 13, 2019, and a copy was served upon Respondent by U.S. mail on May 14, 2019.

(b) The first amended charge in this proceeding was filed by the Charging Party on July 9, 2019, and a copy was served upon Respondent by U.S. mail on July 10, 2019.

(c) The second amended charge in this proceeding was filed by the Charging Party on November 12, 2019, and a copy was served upon Respondent by U.S. mail on November 14, 2019.

2. (a) At all material times, Respondent has been a corporation with an office and place of business in Iselin, New Jersey, and has been engaged in providing railroad terminal services at facilities throughout the United States, including at the Norfolk-Portlock Intermodal Yard (Norfolk Yard) located at 1701 Atlantic Avenue in Chesapeake, Virginia.

(b) During the 12-month period ending May 30, 2020, Respondent, in conducting its operations described above in paragraph 2(a), performed services valued in excess of \$50,000 in states other than the State of Virginia.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. (a) About January 23, 2019, Respondent assumed performing railroad terminal services to Norfolk Southern Railway Company at the Norfolk Yard previously performed by ITS Technologies & Logistics, LLC (ITS) at the Norfolk Yard and, since then, Respondent has continued to operate the business previously performed by ITS at the Norfolk Yard in basically unchanged form.

(b) But for the conduct described below in paragraph 14, Respondent would have employed, as a majority of its employees, individuals who were previously employees of ITS.

(c) Based on the conduct described below in paragraph 14 and the operations described above in paragraphs 3(a) and 3(b), Respondent has continued the employing entity and is a successor to ITS.

4. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, Teamsters Local Union No. 822, affiliated with the International Brotherhood of Teamsters (Teamsters Local 822) has been a labor organization within the meaning of Section 2(5) of the Act.

6. (a) At all material times, the following individuals held the positions set forth opposite their respective names, and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

- |                     |   |  |
|---------------------|---|--|
| (1) Leander Barrow  | - | Operations Manager at Norfolk Yard<br>until about May 5, 2019<br>Terminal Manager at Norfolk Yard since<br>about May 6, 2019 |
| (2) Charles Connors | - | President and Chief Operating Officer  |
| (3) Jesse DeGroot   | - | General Manager, Intermodal Operations   |
| (4) Anthony Lee     | - | Terminal Manager at Norfolk Yard<br>until about April 30, 2019   |
| (5) Alan Young      | - | Operations Manager at Norfolk Yard since<br>about May 5, 2019  |

(b) At all material times, Juanita Williams held the position of Respondent's Administrative Assistant at the Norfolk Yard, and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

7. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time terminal operators, gate clerks, container and chassis mechanics, and lift equipment mechanics; but excluding all office clerical employees, professional employees, watchmen, guards, and supervisors as defined in the Act.

8. On December 10, 2018, the Charging Party was certified as the exclusive collective-bargaining representative of the Unit employed by ITS.

9. Since about January 23, 2019, based on the facts described above in paragraph 3, the Charging Party has been the designated, exclusive collective-bargaining representative of the Unit.

10. (a) From about December 10, 2018 to January 23, 2019, based on Section 9(a) of the Act, the Charging Party had been the exclusive collective-bargaining representative of the Unit employed by ITS.

(b) At all times since about January 23, 2019, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of Respondent's employees in the Unit.

11. About late January or early February of 2019, Respondent, by Anthony Lee, by telephone, at the Norfolk Yard, told former employees of ITS in the Unit, who had called to inquire about the status of their employment application to work for Respondent, that they worked for the union because they had voted to be represented by the union at ITS and he did not understand why they were calling him now.

12. (a) From about January 17, 2019 to about January 23, 2019, Respondent, by Jesse DeGroot, gave assistance and support to Teamsters Local 822 by:

(i) urging Respondent's employees to sign Applications and Notices for Membership for Teamsters Local 822; and

(ii) giving Teamsters Local 822 unfettered access to Respondent's employees at the hotel where Respondent had arranged for the employees to stay while they were in Virginia.

(b) About January 23, 2019, Respondent granted recognition to and, about January 28, 2019, entered into and, since then, has maintained and enforced a collective-bargaining agreement with Teamsters Local 822 as the exclusive collective-bargaining representative of the following employees of Respondent (the Teamsters Unit): all full and part-time switcher drivers, crane operators, lift drivers, and clerks.

13. Respondent engaged in the conduct above in paragraph 12, even though Teamsters Local 822 did not represent a majority of the Teamsters Unit.

14. (a) Since January 2019, Respondent was hiring, or had concrete plans to hire, employees to work at the Norfolk Yard.

(b) Since about January 23, 2019, Respondent, in connection with the conduct described above in paragraphs 11 and 12, refused to hire, or consider for hire, the following employees of ITS in the Unit who applied for employment: Michelle Clarke, Vernon Cuffee, Rayeon Ricks Jordan, Mark Keating, Jamel Christopher Lucas, Michael McManus, Ernest Pierre Perry, and Earl Lee Smith.

(c) From about January 23, 2019, to November of 2019, Respondent, in connection with the conduct described above in paragraphs 11 and 12, refused to hire, or consider for hire, the following employees of ITS in the Unit who applied for employment: Carlos Jones and Ron Spencer.



(d) From about January 23, 2019, to about August 2019, Respondent, in connection with the conduct describe above in paragraphs 11 and 12, refused to hire, or consider for hire, the following employee of ITS in the Unit who applied for employment: Darryl Halsey.

15. Respondent engaged in the conduct described above in paragraph 14, because Respondent believed the named employees joined and assisted the Charging Party and engaged in concerted activities, and to discourage employees for engaging in these activities.

16. But for the conduct described above in paragraphs 14 and 15, Respondent would have employed at the Norfolk Yard, as a majority of its employees, individuals who were previously employed by ITS in the Unit at the Norfolk Yard.

17. Based on the conduct described above in paragraphs 14 through 16, and the operations described above in paragraph 3, Respondent has continued the employing entity and is a successor to ITS at the Norfolk Yard.

18. (a) Since about January 23, 2019, based on the conduct described above in paragraph 10, and paragraphs 14 through 17, the Charging Party has been the exclusive collective-bargaining representative of Respondent's employees in the Unit.

(b) At all times since about January 23, 2019, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of Respondent's employees in the Unit.

19. Since about January 23, 2019, Respondent has established rates of pay, benefits, hours of work, and other terms and conditions of employment for the employees in the Unit without prior notice to the Charging Party and/or without affording the Charging Party an opportunity to bargain with Respondent with respect to this conduct.

20. The subjects set forth in paragraph 19 relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects for the purpose of collective bargaining.

21. About January 31, 2019, the Charging Party, by letter, requested that Respondent recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Charging Party as the exclusive collective-bargaining representative of the Unit.

22. Since about January 31, 2019, Respondent has failed and refused to recognize and bargain with the Charging Party as the exclusive collective-bargaining representative of the Unit.

23. By the conduct described above in paragraph 11, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

24. By the conduct described above in paragraphs 12 and 13, Respondent has been rendering unlawful assistance and support to a labor organization in violation of Section 8(a)(1) and (2) of the Act

25. By the conduct described above in paragraphs 14 and 15, Respondent has been discriminating in regard to the hire or tenure, or terms and conditions of employment ,of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

26. By the conduct described above in paragraphs 19, 20, and 22, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

27. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **REMEDY**

The Acting General Counsel seeks, as part of the remedy for the allegations in paragraphs 14, 15, and 25, an Order that Respondent: (1) offer immediate and full reinstatement to each discriminatee denied hire; (2) make whole the discriminatees it refused to hire, as well as those it delayed in hiring, for any loss of earnings and other benefits; (3) be required to reimburse amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination; and (4) for each discriminatee receiving backpay as a result of those unfair labor practices, Respondent be required to submit to the Regional Director for Region 5 a completed IRS Form W-2 reflecting backpay paid to each of the discriminatees.

The Acting General Counsel seeks, as part of the remedy for Respondent's unfair labor practices alleged above in paragraphs 12 through 22 and 24 through 26, an Order requiring Respondent: (1) to withdraw its recognition from Teamsters Local 822; (2) rescind the unilateral changes made by Respondent and the collective-bargaining agreement Respondent entered into with Teamsters Local 822; and (3) recognize and bargain in good faith with the Charging Party, on request, for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the first amended complaint. The answer must be **received by this office on or before March 18, 2021**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed,

or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the first amended complaint are true.

Dated at Baltimore, Maryland this 4th day of March 2021.

(SEAL)

/s/ SEAN R. MARSHALL

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Sean R. Marshall, Regional Director  
National Labor Relations Board, Region 5  
Bank of America Center - Tower II  
100 South Charles Street, Suite 600  
Baltimore, MD 21201

Attachments

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in

**evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Case 5-CA-241380

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Brendan J. Fitzgerald, Esquire  
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**RESPONDENT:**

Mr. Charles T. Connors  
President  
H&M International Transportation, Inc.  
[connors@hmit.net](mailto:connors@hmit.net)



**Case 5-CA-241380**

FORM NLRB 4338  
(6-90)  
(Continued)

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**CHARGING PARTY:**

Mr. Stephen Walton  
Local President  
International Longshoremen's Association,  
Local 1970  
[stephenwalton77@yahoo.com](mailto:stephenwalton77@yahoo.com)

**INTERESTED PARTY:**

Mr. James Wright  
President  
Teamsters Local Union No. 822, Affiliated  
With International Brotherhood of  
Teamsters  
[jamesraiders66@aol.com](mailto:jamesraiders66@aol.com)

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

**INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, LOCAL 1970,**

Charging Party,

v.

**H&M INTERNATIONAL TRANSPORTATION,  
INC.,**

Respondent.

Case No. 05-CA-241380

**RESPONDENT H&M INTERNATIONAL TRANSPORTATION, INC.'S  
ANSWER TO FIRST AMENDED COMPLAINT**

NOW COMES Respondent H&M International Transportation, Inc. ("Respondent"), by and through its attorneys, Littler Mendelson, P.C., and for its Answer and Defenses to the First Amended Complaint ("First Amended Complaint") of International Longshoremen's Association, Local 1970, a/k/a International Longshoremen's Association, Local 1970, AFL-CIO ("Charging Party") states as follows:

**RESPONSE TO FIRST AMENDED COMPLAINT**

Respondent admits that the First Amended Complaint is based upon a charge brought by Charging Party against Respondent and that it is purportedly brought pursuant to Section 10(b) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151, *et seq.*, and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the "Board") and alleges that Respondent has violated the Act. However, as detailed below, Respondent denies the allegations in the charge upon which the First Amended Complaint is based, denies the allegations in the First

Amended Complaint, denies that it violated the Act, and denies any remaining allegations in the initial, unnumbered Paragraph of the First Amended Complaint.

**1.**

(a) Respondent admits receiving a copy of the unfair labor practice charge filed by Charging Party. Respondent denies the remaining allegations in Paragraph 1(a) of the First Amended Complaint.

(b) Respondent admits receiving a copy of the first amended unfair labor practice charge filed by Charging Party. Respondent denies the remaining allegations in Paragraph 1(b) of the First Amended Complaint.

(c) Respondent admits receiving a copy of the second amended unfair labor practice charge filed by Charging Party. Respondent denies the remaining allegations in Paragraph 1(c) of the First Amended Complaint.

**2.**

(a) Respondent admits the allegations in Paragraph 2(a) of the First Amended Complaint.

(b) Respondent admits the allegations in Paragraph 2(b) of the First Amended Complaint.

(c) Paragraph 2(c) states a legal conclusion for which no response is required. To the extent a response is required, Respondent admits the allegations in Paragraph 2(c).

**3.**

(a) Respondent admits that, on or about January 23, 2019, Respondent assumed performing railroad terminal services for Norfolk Southern Railway Company at the Norfolk Yard

previously performed by ITS Technologies & Logistics, LLC (“ITS”) at the Norfolk Yard. Respondent denies the remaining allegations in Paragraph 3(a) of the First Amended Complaint.

(b) Respondent denies the allegations in Paragraph 3(b) of the First Amended Complaint.

(c) Respondent denies the allegations in Paragraph 3(c) of the First Amended Complaint.

**4.**

Paragraph 4 states a legal conclusion for which no response is required. To the extent a response is required, Respondent admits the allegations in Paragraph 4.

**5.**

Paragraph 5 states a legal conclusion for which no response is required. To the extent a response is required, Respondent admits the allegations in Paragraph 5.

**6.**

(a) Responding to Paragraph 6(a) of the First Amended Complaint, Respondent admits that, at all material times, Leander Barrow held the position of Operations Manager at Norfolk Yard until about May 5, 2019 and the position of Terminal Manager at Norfolk Yard until about May 6, 2019; Charles Connors held the position of President and Chief Operating Officer with Respondent; Jesse Degroot held the position of Vice President, Intermodal Operations with Respondent; Anthony Lee held the position of Terminal Manager at Norfolk Yard, until approximately April 30, 2019; and Alan Young held the position of Operations Manager at Norfolk Yard beginning approximately May 5, 2019. The allegations in Paragraph 6(a) also state legal conclusions about Mr. Barrow, Mr. Connors, Mr. Degroot, Mr. Lee, and Mr. Young’s supervisory

and agency status under the Act for which no response is required. To the extent a response is required, Respondent admits the allegations.

(b) Responding to Paragraph 6(b) of the First Amended Complaint, Respondent admits that, at all material times, Juanita Williams has held the position of Respondent's Administrative Assistant at the Norfolk Yard. The allegations in Paragraph 6(b) also state legal conclusions about Ms. Williams' agency status under the Act for which no response is required. To the extent a response is required, Respondent denies the allegations in Paragraph 6(b). Respondent denies any remaining allegations in Paragraph 6(b) of the First Amended Complaint.

**7.**

Paragraph 7 states a legal conclusion for which no response is required. To the extent a response is required, Respondent denies the allegations in Paragraph 7.

**8.**

Upon information and belief, Respondent admits the allegations in Paragraph 8 of the First Amended Complaint.

**9.**

Respondent denies the allegations in Paragraph 9 of the First Amended Complaint.

**10.**

(a) Upon information and belief, Respondent admits the allegations in Paragraph 10(a) of the First Amended Complaint.

(b) Respondent denies the allegations in Paragraph 10(b) of the First Amended Complaint.

**11.**

Respondent denies the allegations in Paragraph 11 of the First Amended Complaint.

**12.**

(a) Respondent denies the allegations in Paragraph 12(a)(i) and 12(a)(ii) of the First Amended Complaint.

(b) Respondent admits that, on January 28, 2019, it provided a copy of a collective-bargaining agreement with Teamsters Local 822 which was executed by a representative of Respondent. Respondent further admits that, on February 20, 2019, it received a countersigned signature page from a representative of Teamsters Local 822 with respect to that collective bargaining agreement. Respondent further admits that, since then, it has maintained and enforced a collective-bargaining agreement with Teamsters Local 822 as the exclusive collective-bargaining representative of the following employees: all full and part-time switcher drivers, crane operators, lift drivers, and clerks. Respondent denies any remaining allegations in Paragraph 12(b) of the First Amended Complaint.

**13.**

Respondent denies the allegations in Paragraph 13 of the First Amended Complaint.

**14.**

(a) Respondent admits the allegations in Paragraph 14(a) of the First Amended Complaint.

(b) Respondent denies the allegations in Paragraph 14(b) of the First Amended Complaint.

(c) Respondent denies the allegations in Paragraph 14(c) of the First Amended Complaint.

(d) Respondent denies the allegations in Paragraph 14(d) of the First Amended Complaint.

**15.**

Respondent denies the allegations in Paragraph 15 of the First Amended Complaint.

**16.**

Respondent denies the allegations in Paragraph 16 of the First Amended Complaint.

**17.**

Respondent denies the allegations in Paragraph 17 of the First Amended Complaint.

**18.**

(a) Respondent denies the allegations in Paragraph 18(a) of the First Amended Complaint.

(b) Respondent denies the allegations in Paragraph 18(b) of the First Amended Complaint.

**19.**

Respondent denies that Charging Party was owed prior notice of or had the right to bargain over the setting of any terms and conditions of employment for any of Respondent's employees. Respondent admits any remaining allegations in Paragraph 19 of the First Amended Complaint.

**20.**

Paragraph 20 states a legal conclusion for which no response is required. To the extent a response is required, Respondent admits the allegations in Paragraph 20 of the First Amended Complaint.

**21.**

Respondent admits that Charging Party requested that it be recognized as the exclusive collective-bargaining agent of the ITS Unit and to bargain collectively with Respondent. Respondent denies any remaining allegations in Paragraph 21 of the First Amended Complaint.

**22.**

Respondent denies the allegations in Paragraph 22 of the First Amended Complaint.

**23.**

Respondent denies the allegations in Paragraph 23 of the First Amended Complaint.

**24.**

Respondent denies the allegations in Paragraph 24 of the First Amended Complaint.

**25.**

Respondent denies the allegations in Paragraph 25 of the First Amended Complaint.

**26.**

Respondent denies the allegations in Paragraph 26 of the First Amended Complaint.

**27.**

Respondent denies the allegations in Paragraph 27 of the First Amended Complaint.

**AFFIRMATIVE DEFENSES**

1. As a FIRST, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that the claims alleged in the First Amended Complaint are barred because, by and as a direct result of the President's unlawfully terminating the duly-appointed General Counsel, Peter Robb, the President unlawfully designated Peter Sung Ohr as the Acting General Counsel, as a result of which Acting General Counsel Ohr did not have the authority to issue or authorize the issuance of the Complaint, and lacks the authority to perform or authorize the performance of any other functions or actions in this matter that fall within the scope of the authority and responsibilities of the General Counsel for which Section 3(d) of the Act provides. Indeed, any individual, except for Mr. Robb, purporting to act on behalf of the General Counsel during the remainder of Mr. Robb's term, is acting *ultra vires*.



2. As a SECOND, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that the claims alleged in the First Amended Complaint are barred in whole or in part because the allegations upon which they are based are insufficient to state any violations of the Act.

3. As a THIRD, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that even assuming, *arguendo*, any allegation in the First Amended Complaint is found to be a violation of the Act, the remedy requested is inappropriate as a matter of law and that the remedies requested therein, are improper to the extent that they exceed the scope of the allegations contained within the charging party's unfair labor practice charges at issue in this matter.

4. As a FOURTH, AND SEPARATE AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges the Board and the General Counsel have exceeded their authority in the investigation of the charging party's unfair labor practice charges.

5. As a FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges it has not, at any time, interfered with, restrained, or coerced any employees in the exercise of their Section 7 rights under the Act.

6. As a SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that the Board has no jurisdiction over those alleged unfair labor practices set forth in the First Amended Complaint which are barred by the six-month statute of limitations set forth in Section 10(b) of the Act.

7. As a SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that the First Amended Complaint fails to state a *prima facie* violation of the Act.

8. As an EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that the General Counsel has interpreted the Act in a way that improperly conflicts with Congressional intent.

9. As a NINTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that, at no time, was Charging Party recognized, or entitled to be recognized, as the certified bargaining representative, or entitled to be recognized as the certified bargaining representative, for a bargaining unit of Respondent's employees at the Norfolk-Portlock Intermodal Yard.

10. As a TENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that it lawfully recognized Teamsters Local Union No. 822 as the exclusive representative of a bargaining unit of employees at the Norfolk-Portlock Intermodal Yard.

11. As an ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that it lawfully bargained with Teamsters Local Union No. 822 as the exclusive representative of a bargaining unit of employees at the Norfolk-Portlock Intermodal Yard.

12. As a TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that it lawfully entered into a collective bargaining agreement with Teamsters Local Union No. 822 as the exclusive representative of a bargaining unit of employees at the Norfolk-Portlock Intermodal Yard.

13. As a THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that it lawfully implemented terms and conditions of employment for its employees.

14. As a FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that, at no time, did it unlawfully discriminate against any person as a result of his or her concerted activities or exercise of rights protected by the Act, including with respect to hiring or considering an applicant for employment with Respondent, tenure, or terms and conditions of employment.

15. As a FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent alleges that, at no time, was it a successor to ITS Technologies & Logistics, LLC at the Norfolk-Portlock Intermodal Yard.

16. As a SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE to the First Amended Complaint, Respondent reserves the right to assert any additional affirmative defenses it discovers during the course of these proceedings.

WHEREFORE, Respondent pray that the First Amended Complaint be dismissed in its entirety and that Respondent recover its costs and attorneys' fees incurred herein and for such other and further relief as may be just and proper.

Respectfully submitted,

**LITTLER MENDELSON, P.C.**

*/s/ Stefan Marculewicz*

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*Attorneys for Respondent*

Dated: March 15, 2021

## **CERTIFICATE OF SERVICE**

I hereby certify that, on this 15<sup>th</sup> day of March, 2021, the foregoing *Respondent H&M International Transportation, Inc. 's Answer to First Amended Complaint* has been electronically provided to the following:

Executive Secretary of the National Labor Relations Board,  
Roxanne Rothschild – [roxanne.rothschild@nlrb.gov](mailto:roxanne.rothschild@nlrb.gov)

For the General Counsel,  
Barbara Duval – [barbara.duvall@nlrb.gov](mailto:barbara.duvall@nlrb.gov)  
Stephanie Eitzen – [stephanie.eitzen@nlrb.gov](mailto:stephanie.eitzen@nlrb.gov)

For the Charging Party (ILA, Local 1970),  
Brian Esders – [besders@abatolaw.com](mailto:besders@abatolaw.com)  
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For the Interested Party (Teamsters Local 822),  
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/s/ Stefan Marculewicz  
An Attorney for Respondent

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